



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

February 11, 1949.

Hon. M. E. Gates  
County Attorney  
Walker County  
Huntsville, Texas

Opinion No. V-770

Re: The authority of the County Attorney or the County Clerk to take affidavits giving information that a person is of unsound mind.

Dear Sir:

Reference is made to your recent request which reads in part as follows:

"I wish you would advise me whether or not, under the provisions of Article 5561-A, the County Attorney and the County Clerk have the authority to take the affidavit of the affiant or informant, to an information charging that a person is of unsound mind."

Section 1, Article 5561a provides in part as follows:

"Section 1. If information in writing under oath be given to any county judge that any person in his county, not charged with a criminal offense, is a person of unsound mind, and that the welfare of either such person or any other person or persons requires that he be placed under restraint, and such county judge shall believe such information to be true, he shall forthwith issue a warrant for the apprehension of such person, or, if such like information be given to any justice of the peace in such county, said justice may issue a warrant for the apprehension of said person, making said complaint and warrant returnable to the county court of said county,

and said county judge in either event shall fix a time and place for the hearing and determination of the matter, either in term time or in vacation, which place shall be either at the court house of the county, or at the residence of the person named, or at any other place in the county, as the county judge may deem best for such hearing. .

The pertinent provisions of Article 26, V. C. S., are as follows:

"1. All oaths, affidavits, or affirmations made within this State may be administered and a certificate of the fact given by:

"a. A judge, clerk, or commissioner of any court of record;

"b. A notary public;

"c. A justice of the peace; . . ."

Therefore under the provisions of the preceding Articles we think it is clear that the County Clerk may administer the oath referred to under Article 5561a, supra.

It will be noted that the County Attorney is not included in Article 26, supra. Neither are we able to find any statute which authorizes the County Attorney to administer such an oath.

Article 30 V. C. C. P. provides that "for the purpose mentioned in the two preceding Articles, district and county attorneys are authorized to administer oaths." The "two preceding Articles" referred to have to do with the issuance of a complaint where an offense has been committed or alleged; they include misdemeanors and felonies. Similarly Article 221 V. C. C. P. provides that "the affidavit made before the . . . district or county attorney is called a complaint if it charges the commission of an offense." The oaths referred to in Articles 30 and 221 relate to criminal cases only. It is stated in 24 Tex. Jur. 388 that:

"The procedure for adjudging one not charged with crime to be a person of unsound mind and providing for his restraint is solely through the County Courts. And although the state is a party to such an inquiry, the character of the proceeding is essentially civil."

In view of the foregoing it is our opinion that the County Attorney may not administer such an oath in his official capacity. However, it was held in A. G. Opinion No. 0-4228 that:

"You are further advised that the county attorney and the city attorney are not prohibited by law from holding the office of notary public while holding their offices of county attorney and city attorney."

Therefore if the County Attorney has qualified as a Notary Public, it is our opinion that he may administer such an oath under the provisions of Article 26, V. C. S., as a Notary Public.

SUMMARY

The County Clerk may administer the oath of one charging that a person is of unsound mind. Art. 26, V.C.S. The County Attorney may not administer such an oath in his official capacity. However, if he has qualified as a Notary Public, he may administer such oath. Art. 26, V. C.S.; A. G. Opinion No. 0-4228.

Yours very truly,

APPROVED

ATTORNEY GENERAL OF TEXAS

*Fagan Dickson*

FIRST ASSISTANT  
ATTORNEY GENERAL

By

*Bruce Allen*  
Bruce Allen  
Assistant

BA:bh